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December 6, 2017

VIA EMAIL ([WILSON.ERIC@EPA.GOV](mailto:WILSON.ERIC@EPA.GOV)) AND REGULAR MAIL

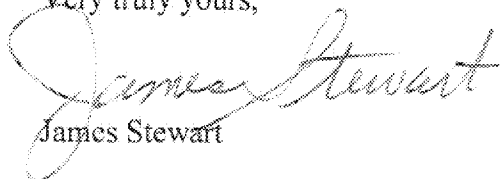
Eric J. Wilson  
Deputy Director for Enforcement  
and Homeland Security  
USEPA  
Region 2  
290 Broadway  
New York, NY 10007-1866

**Re: Allocation for Operable Unit 2 Remedial Action  
Diamond Alkali Superfund Site, Essex and Hudson Counties, NJ**

Dear Mr. Wilson:

Please find the enclosed memo sent on behalf of the forty-three companies identified on the attached list.

Very truly yours,



James Stewart

JS:cas  
Enclosure

cc: David Batson, Esq., AlterEcho (*via email, w/encl.*)  
Mary Apostolico, CSRA (*via email, w/encl.*)  
Kathryn Barton, EPA – OARM (*via email, w/encl.*)  
Juan Fajardo, Esq., EPA – ORC (*via email, w/encl.*)

12453/125  
12/6/17 49318526.1

# MEMORANDUM

**FROM:** The Forty-Three Companies on the attached list

**To:** Eric J. Wilson

**CC:** David Batson, Esq., AlterEcho  
Mary Apostolico, CSRA  
Kathryn Barton, EPA - OARM

**DATE:** December 6, 2017

**SUBJECT:** **Allocation for Operable Unit 2 Remedial Action**  
**Diamond Alkali Superfund Site, Essex and Hudson Counties, NJ**

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On behalf of the companies identified on the attached list, this memo responds to your correspondence dated November 28, 2017 in the above matter. We request that EPA not make a final decision on these issues and meet with the companies to discuss the allocation process issues so that they may more fully explain the need for augmentation.

At the October 13 meeting we had the clear understanding from our discussions with David Batson that some augmentation of the allocation process was expected and needed and that EPA understood and agreed with the need for augmentation. It was with that understanding that the company representatives began discussing with David Batson areas that should be augmented, with the acknowledgment that they would need to provide funding for any augmentation to supplement the EPA contract. The parties contemplated that they would engage in a deliberative process with David Batson to determine the appropriate augmentation. We remain committed to do so and then present EPA with the result of that deliberation for its review and approval. Because of the complexity of the case, as well as the size and cost of the remedy, it is important that the allocation process provide the Allocator with sufficient information to evaluate the merits properly, yet without engaging in layers of process that are inefficient and unproductive. The companies and David Batson thought it important that the participants have input into the augmentation to achieve this result. Your letter suggests that EPA will evaluate augmentation in discussion with David Batson. You mention feedback from other participants, but it is not clear whether you are referring to an upcoming opportunity for feedback or ex parte feedback that EPA has received directly already from some of the companies.

The augmentation of the allocation that we submit is necessary includes the following. This is not a complete list; as noted above, we envisioned working with David Batson and the other parties to determine the appropriate augmentation, and those discussions remain in the early stages. These discussions will not delay the EPA contract process as they were and will continue to be done in parallel with the other work David Batson is undertaking pursuant to the EPA timeline.

## **ASSURING A SUFFICIENT DATABASE OF DOCUMENTS**

We are concerned that the document database will not contain all relevant documents needed to perform a reasonable and reliable allocation. First, we understand from David Batson that he has received some documents from EPA, but there is no index or organization of the documents. There is a need to have a clear understanding of the documents in the database and that the database be augmented to include the relevant documents that relate to: PRP site operations and conduct; hazardous substance discharges; pathways for hazardous substance discharges to impact the Passaic River; the lower Passaic River 8.3 mile FFS area site issues; and factual information that any participants will rely on to support submissions arguing what allocation share they or any other participant should be given. Second, the current work plan limits David Batson's review to 150,000 pages, and such limitation is disproportionate to the complexity of the allocation, the number of relevant documents existing, and the significant costs at issue.

## **ASSURING ADEQUATE PARTICIPATION AND INPUT INTO THE ALLOCATION DECISION**

We understand that the current process allows for David Batson to meet with each participant for approximately 20 minutes. That time limit for a meeting is not sufficient to discuss in any meaningful detail the issues in this case. Assuring that the participants can make written submissions and have meaningful discussions with David Batson is important to assure the accuracy and reliability of the allocation decision. The participants need to believe that their positions and the evidence were fully presented and considered.

## **OFF RAMPS**

Allowing early resolution for parties who are entitled to special treatment should be part of the process. But, the determination of who is eligible for early resolution needs to be made on sufficient information and based on criteria agreed to by EPA, the allocator and the parties to the allocation. We were, and are, prepared to discuss that issue with David Batson as part of the augmentation discussions.

## **TIMING OF ALLOCATION**

We recognize that the augmentation may modestly extend the time for the allocation. We believe that augmentation may add months to the process, but that the allocation can still be done well within time for EPA to use it as part of its process to achieve timely settlements and performance of the remedy for the lower 8 miles.

## CONCLUSION

We ask EPA not to make a unilateral decision on augmentation based on the current information before it. We are willing to work with EPA to develop a specific augmentation plan that the participants and EPA can agree on and that the participants would be willing to fund. Once that plan is developed we expect that EPA will agree that it improves the allocation process, does not conflict with EPA's allocation contract and should be adopted. If EPA has additional questions or concerns with regard to this request, we want to meet to resolve them. Thank you for your consideration of these important issues.

12453/125  
12/06/2017 49343615.1

The attached Memo is sent on behalf of the following companies:

- 1) Sun Chemical Co.
- 2) Hoffmann-LaRoche Inc.
- 3) Tiffany and Company
- 4) Textron Inc.
- 5) 21st Century Fox America, Inc.
- 6) CBS Corporation
- 7) Tate & Lyle Ingredients Americas LLC,
- 8) Quality Carriers, Inc.
- 9) Coats & Clark Inc.
- 10) General Electric Company
- 11) Stanley Black & Decker
- 12) EPEC Polymers
- 13) Chevron Environmental Management Company for itself and as attorney in fact for Texaco Inc.  
And TRMI-H LLC
- 14) Essex Chemical
- 15) Hexcel Corporation
- 16) Croda, Inc.
- 17) Franklin-Burlington Plastics, Inc.
- 18) Revere Smelting & Refining Corp.
- 19) Newell Brands Inc. (f/k/a Newell Rubbermaid Inc.) on behalf of itself and its wholly-owned subsidiaries Goody Products, Inc. and Berol Corporation (as successor by merger to Faber-Castell Corporation)
- 20) STWB Inc.

- 21) EnPro Holdings, Inc. (successor to Coltec Industries Inc)
- 22) BASF
- 23) Lucent Technologies
- 24) Arkema Inc.
- 25) Purdue Pharma Technologies Inc.
- 26) Legacy Vulcan Corp.
- 27) Covanta Essex Company
- 28) Givaudan Fragrances Corporation
- 29) Otis Elevator Co.
- 30) Goodrich Corp. for itself and on behalf of Kalama Specialty Chemicals, Inc.
- 31) Honeywell International, Inc.
- 32) PSE&G
- 33) National Standard
- 34) Cooper Industries LLC
- 35) Garfield Molding Company, Inc.
- 36) PPG Industries, Inc.
- 37) Sequa Corporation
- 38) McKesson Corp. for itself and on behalf of Safety Kleen EnviroSystems Co.
- 39) Harris Corporation, formerly known as Exelis Inc., successor in interest to ITT Corporation, Avionics Division
- 40) Pharmacia LLC
- 41) Ashland LLC
- 42) ISP Chemicals LLC
- 43) The Essex County Improvement Authority (as contractual indemnitor for Celanese's former Doremus Avenue facility)